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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 458.

McALLISTER LIGHTERAGE LINE, INC.,
Respondent,

against

INSURANCE COMPANY OF NORTH AMERICA,
Respondent,

and

SCOTT PAPER COMPANY
Petitioner.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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The Court of Appeals did not "set aside the jury's verdict" (petition, page 2):

It ordered (page 12A of Appendix to petition):

> "that the judgment of said District Court be and it hereby is reversed and action remanded for entry of judgment against Scott for $20,000, and for dismissal of the complaint against the Insurance Company of North America,"

in effect correcting the judgment to conform with the findings of the jury as set out in the answers to the interrogatories propounded to the jury.

The jury found that the loss of the scow was proximately caused by petitioner Scott's negligence after the delivery of the scow to it. The jury also found that the market value of the scow was $20,000 (page 4A of Appendix to petition).

Since there was a general verdict and answers to specific questions given by the jury, it is plain that the Court of Appeals was acting under F. R. C. P. 49B, which provides in part:

> "* * * When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict or may return the jury for further consideration of its answers and verdict or may order a new trial. * * *"

In the instant case the jury's answers to the interrogatories are consistent with each other, but one of them is inconsistent with the general verdict, in the opinion of the Court of Appeals. Having determined such inconsistency, the Court expeditiously corrected it by directing that the judgment be molded to apply the correct law to the jury's verdict on the issues of fact upon which the jury passed.

The enlightened advances in procedure made possible by the provisions of F. R. C. P. for a general verdict and answers to specific questions, will be practically nullified by adopting petitioner's arguments. We submit the Rules were designed to avoid new trials of the same issues when the jury's finding is clear.

The facts in the instant case distinguish it from *Slocum v. New York Life Ins. Co.* (1913), 228 U. S. 364; *Baltimore*

& Carolina Line v. *Redman* (1935), 295 U. S. 654, and *Aetna Ins. Co.* v. *Kennedy* (1937), 301 U. S. 389, relied upon by petitioner. In each of those cases the jury had returned only a general verdict and the Court did not have the benefit of the jury's findings on the specific issues of fact as a foundation for the application of the appropriate legal principles.

In those cases the error which served as the basis of reversal in this Court was the usurpation by the Court of Appeals of a party's right to have factual questions passed upon by a jury. In this case petitioner has fully enjoyed that right and the jury answered every factual question in favor of this respondent and against this petitioner. Those questions and the jury's answers involved not only all the issues of the petitioner's liability, but the monetary extent thereof as well.

Recent cases in which Courts of Appeal concluded that the law applicable to the facts as found required changes in the judgment without a new trial are: *Phillips & Benjamin Co, Inc.* v. *Ratner*, 206 F. (2d) 372; *Bank of China* v. *Wells Fargo*, 190 F. (2d) 1010; *Garrett* v. *Faust*, 183 F. (2d) 625.

We submit that since the petitioner has been found negligent by the jury and since the same jury also found the facts to which the Court of Appeals applied a rule of law to fix the monetary extent of such liability, it has had its full day in Court and its petition should be denied.

Respectfully submitted,

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